IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6491 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRA D VASAVADA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 6491 of 2002

MR ANSHIN H DESAI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

MR SN SINHA for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/01/2003

ORAL JUDGEMENT

1. Rule. Mr.S.N.Sinha, learned Counsel for the

respondent waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing.

2. The short facts of the case are that the petitioner, who is an employee of Gujarat Electricity Board (GEB) and the wife of the petitioner had undergone engiography and bypass surgery thereafter. The medical bill was submitted. It is the case of the petitioner that initially the medical bill was sanctioned. Thereafter, the petitioner is communicated as per the letter dated 17-1-2000 that since the income of the wife of the petitioner is exceeding Rs.1,000/=, the same is rejected. Under these circumstances, the present petition.

3. Mr.Desai, learned Counsel appearing for the petitioner submitted that even as per the circular of the GEB, which is produced by the respondent in the affidavit-in-reply filed by Dilip R. Gupta, Dy. General Manager, it has been, inter alia, provided that so far as the spouse of the employee is concerned, the reimbursement can be considered even if the income is exceeding Rs.1,000/= and, therefore, the decision to reject the proposal for reimbursement merely on the ground that the income of the wife of the petitioner is exceeding Rs.1,000/= is, ex-facie, arbitrary and deserves to be quashed. Mr.Desai has submitted that since the case of the petitioner is covered by the circular dated 3-11-1993, direction may be given by this Court to GEB to reimburse the medical bill for the operation of the wife of the petitioner.

4. On behalf of the respondent, Mr.Sinha, learned Counsel, has submitted that the circular dated 3-11-1993, which is produced is not happily worded. Mr.Sinha submitted that as a matter of fact the limit of Rs.1,000/= is operating to all the dependents, including spouses. Once the income of the spouse exceeds Rs.1,000/=, the medical retrenchment is not permissible. Mr.Sinha also submitted that the wife of the petitioner, as per the income tax records, is a practising lawyer and as per the income tax records, she is having income exceeding Rs.60,000/= p.a., which in any case is above Rs.1,000/= p.m. and, therefore, the decision of the GEB to reject the proposal for reimbursement of the medical bill is legal and correct. Mr.Sinha has also submitted that the position of the wife or husband, as the case may be, is the same and at par with the other dependent members of the family of any employee and there cannot be a separate or distinguishing yardstick and hence also the

decision of the Board is legal and valid.

5. In view of the above, the last contention of Mr.Sinha deserves first consideration that whether the spouse of an employee can be said to be at par with the other dependent members of the family of the employee. In my view, the position of the spouse is not the same, but is on a higher pedestal in comparison to the other dependent members of the family. One of tests is that a wife would be entitled to family pension after the death of the husband, which will not be the case so far as the other dependent members are concerned and more particularly after attaining majority. Similarly, if a son or daughter has crossed 25 years of age, then the income of son or daughter is to be independently counted and he or she cannot be treated as dependent, whereas the spouse will continue to be enjoying the benefits throughout the life of the employee and as stated above, the family pension even after the death of the employee would be available to wife and, therefore, Mr.Sinha is not right in submitting that the wife is at par with the other dependent or spouse is at par with the other members of the family of an employee.

6. Even otherwise also, so far as the other aspect which is required to be considered is that even as per the circular dated 3-11-1993, it has been decided to consider for medical reimbursement in a case where the income of the spouse is exceeding Rs.1,000/=. The aforesaid intention is apparent from the last five lines of the circular, the English translation of the same would be as under:

> "The provision is made for considering the case on merits for giving benefit to the husband of a female employee vide circular No.570 dated 13-2-1991, if the income is above Rs.1,000/=. The same is extended and it is decided that it would also apply in respect to the wife of a male employee whose income is Rs.1,000/= and more."

7. In view of the aforesaid, it cannot be said that the petitioner would not be entitled to medical reimbursement, merely on the ground that the income of the wife of the petitioner exceeds Rs.1,000/= and, therefore, the decision of the Board of rejecting the proposal for medical reimbursement on the ground that the income of the wife of the petitioner exceeds Rs.1,000/=, in my view, is contrary to the decision of the Board itself in the circular dated 3-11-1993 and, therefore, arbitrary and deserves to be quashed and set aside.

8. Even otherwise also on true and correct interpretation of the aforesaid circular, it transpires that it is not obligatory for the Board to sanction medical reimbursement in all cases, where the income of the spouses is exceeding Rs.1,000/=, but each case is to be decided on its own merits. Since the circular does not provide for the criteria or the yardstick, I am of the view that a reasonable consideration necessary for the purpose of disbursement of medical bill is required to be considered. Further, exceeding Rs.1,000/=, if read in absolute, it may include the income without any limit at all. To what extent the income should be considered and what will be the other criteria for considering the merits of the proposal are, in my view, to be decided by the Board while taking such decision. Suffice to say that while considering the proposal, the Board should not act arbitrarily and it would be more better, if a uniform method is adopted in respect of all spouses of all employees, so that it may look to be reasonable and fair. I am not expressing any final opinion on the same and the matter is left to the Board for applying appropriate wisdom and take decision.

9. In view of the above discussion, the order dated 17-1-2001 Annexure "A" passed by the Deputy Secretary of the Board of rejecting the proposal of the petitioner for reimbursement of the medical bill is quashed and set aside. However, it is directed that the Board shall consider the proposal of the petitioner for reimbursement of the medical bill afresh, keeping in view the requirement of the circular dated 3-11-1993 and the observations made by this Court as referred to herein above and shall render the decision in accordance with law within a period of three months from the date of receipt of the order of this Court.

10. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs. Direct service is permitted.

18-1-2003 (Jayant Patel, J.)

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